

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On January 22, 2021 appellant, then a 41-year-old general legal and kindred administrator, filed a traumatic injury claim (Form CA-1) alleging that on November 24, 2020, while working remotely, he tripped and fell over cords when he attempted to plug in his laptop while in the performance of duty. He indicated that, as a result of the fall, he aggravated his shoulders.<sup>4</sup> Appellant did not stop work. On the reverse side of the claim form the employing establishment controverted the claim.

In a January 29, 2021 development letter, OWCP informed appellant that it had not received any evidence in support of his claim. It advised him of the type of factual and medical evidence necessary and provided a questionnaire for completion. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated March 11, 2021, OWCP accepted that the November 24, 2020 employment incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted any medical evidence containing a medical diagnosis in connection with the accepted employment incident. Consequently, OWCP concluded that appellant had not met the requirements to establish an injury as defined by FECA.

On May 27, 2021 appellant requested reconsideration of the March 11, 2021 decision. In support of his request, he submitted an April 15, 2021 response to OWCP's development questionnaire, noting that he separated from employment on December 4, 2020 due to harassment, and that he first sought treatment for the alleged injuries at an emergency room on December 12, 2020.

By decision dated August 3, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim.

## **LEGAL PRECEDENT**

Section 8128(a) of FECA does not entitle a claimant the review of an OWCP decision as a matter of right.<sup>5</sup> OWCP has discretionary authority in this regard and has imposed certain

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<sup>4</sup> Appellant previously filed a Form CA-1 alleging that he sustained a left shoulder injury on September 9, 2019, which OWCP denied under OWCP File No. xxxxxx871. He also previously filed a Form CA-1 alleging that he injured both shoulders and his lower back on August 13, 2018 when he tripped and fell while in the performance of duty, to which OWCP assigned OWCP File No. xxxxxx803. OWCP has not administratively combined appellant's claims.

<sup>5</sup> 5 U.S.C. § 8128(a).

limitations in exercising its authority.<sup>6</sup> One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.<sup>7</sup>

A timely request for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>8</sup> When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.<sup>9</sup>

### ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, nor did he advance a relevant legal argument not previously considered by OWCP. Accordingly, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).<sup>10</sup>

In support of his reconsideration request, appellant submitted an April 15, 2021 response to OWCP's development questionnaire asserting that he sought medical treatment for his alleged injuries on December 12, 2020 and that he subsequently separated from the employing establishment due to harassment. While the evidence is new, it is not relevant because it does not address the underlying issue in this case which is medical in nature, *i.e.*, whether appellant established a medical condition in connection with the accepted November 24, 2020 employment incident. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>11</sup> Therefore, appellant is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).

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<sup>6</sup> 20 C.F.R. § 10.607.

<sup>7</sup> *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>8</sup> *Id.* at § 10.606(b)(3); *see L.F.*, Docket No. 20-1371 (issued March 12, 2021); *B.R.*, Docket No. 19-0372 (issued February 20, 2020).

<sup>9</sup> *Id.* at § 10.608.

<sup>10</sup> *Id.* at § 10.606(b)(3); *see also C.C.*, Docket No. 19-1622 (issued May 28, 2020); *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>11</sup> *A.J.*, Docket No. 20-0926 (issued January 26, 2021); *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

The Board, accordingly, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

**CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 3, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board